

FIRST JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF SANTA FE

ENDORSED  
First Judicial District Court

NOV 25 2009

Santa Fe, Rio Arriba &  
Los Alamos Counties  
PO Box 2268  
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO, *ex rel.*  
GARY K. KING, Attorney General,

Plaintiff,

v.

No. D0101-CV-2009-0917

FASTBUCKS HOLDING CORPORATION,  
FAST BUCKS, INC.,  
FASTBUCKS WAGE AND BENEFITS, LLC,  
FASTBUCKS OF ALAMOGORDO, NEW MEXICO, LLC  
FASTBUCKS OF GALLUP, NEW MEXICO, LLC  
FASTBUCKS OF LAS VEGAS, NEW MEXICO, LLC  
FASTBUCKS OF RIO RANCHO, NEW MEXICO, LLC  
FASTBUCKS OF ROSWELL, NEW MEXICO, LLC

Defendants.

**FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO  
UNFAIR PRACTICES ACT, FOR RESTITUTION AND CIVIL PENALTIES,  
AND FOR DECLARATORY, PRELIMINARY AND PERMANENT INJUNCTIVE  
RELIEF**

COMES NOW the State of New Mexico, ex rel. GARY K. KING, Attorney General, by Assistant Attorney General Karen J. Meyers, and alleges that:

**INTRODUCTION**

1. This is a suit seeking injunctive, declaratory and equitable relief, and restitution and civil penalties pursuant to New Mexico common law and the New Mexico Unfair Practices Act, NMSA 1978 § 57-12-1 *et seq.* This action seeks to redress on behalf of the public in New Mexico lending practices by Defendant FASTBUCKS HOLDING CORPORATION, Defendant FAST BUCKS, INC., Defendant FASTBUCKS WAGE AND BENEFITS, LLC, Defendant FASTBUCKS OF

ALAMOGORDO, NEW MEXICO, LLC, Defendant FASTBUCKS OF GALLUP, NEW MEXICO, LLC, Defendant FASTBUCKS OF LAS VEGAS, NEW MEXICO, LLC, Defendant FASTBUCKS OF RIO RANCHO, NEW MEXICO, LLC, and Defendant FASTBUCKS OF ROSWELL, NEW MEXICO, LLC (collectively “Defendants”) for loans made at an unconscionable interest rate in excess of 500% per annum, which loans are in violation of New Mexico law.

### **PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is the duly elected Attorney General for the State of New Mexico. He is authorized to bring this action pursuant to NMSA 1978, § 57-12-8(A) (1967), and NMSA 1978, § 8-5-2(B) (1933). Plaintiff has determined that the matters set forth in this Complaint are in the interest of the State of New Mexico.

3. Defendant FASTBUCKS HOLDING CORPORATION is a duly registered Nevada corporation, with its principal place of business at 7920 Beltline Road, Suite 600, Dallas, Texas 75254-8154.

4. Defendant FAST BUCKS, INC. is a duly registered New Mexico corporation, with its principal place of business in New Mexico at 2225 E. Lohman Street, Las Cruces, New Mexico 88001, and its principal place of business outside of New Mexico at 7920 Beltline Road, Suite 600, Dallas, Texas 75254-8154.

5. Defendant FASTBUCKS WAGE AND BENEFITS, LLC, is a duly registered Nevada limited liability company, with its principal place of business at 7920 Beltline Road, Suite 600, Dallas, Texas 75254-8154.

6. Defendant FASTBUCKS OF ALAMOGORDO, NEW MEXICO, LLC is a duly registered domestic limited liability company, with its principal place of business

at 720 A South White Sands Boulevard, Alamogordo, New Mexico 88310. Defendant is also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

7. Defendant FASTBUCKS OF GALLUP, NEW MEXICO, LLC is a duly registered domestic limited liability company, with its principal place of business at 605 West Highway 66, Gallup, New Mexico 87301. Defendant is also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

8. Defendant FASTBUCKS OF LAS VEGAS, NEW MEXICO, LLC is a duly registered domestic limited liability company, with its principal place of business at 1010 Mills Avenue, Las Vegas, New Mexico 87701. Defendant is also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

9. Defendant FASTBUCKS OF RIO RANCHO, NEW MEXICO, LLC is a duly registered domestic limited liability company, with its principal place of business at 1650 B. Rio Rancho Boulevard, Rio Rancho, New Mexico 87124. Defendant is also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

10. Defendant FASTBUCKS OF ROSWELL, NEW MEXICO, LLC is a duly registered domestic limited liability company, with its principal place of business at 200 West Second Street, Roswell, New Mexico 88201. Defendant is also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

11. At all relevant times Defendants have been, individually and collectively, engaged in trade or commerce in New Mexico within the meaning of NMSA 1978, § 57-12-2(C).

12. Defendants have offered and/or originated the unconscionable loan products at issue in this lawsuit and, upon information and belief, will continue to offer and/or originate such loan products, to residents located throughout the State of New Mexico, including in Bernalillo County.

13. The loan products Defendants offer to New Mexico consumers are not expressly prohibited under the terms of the Small Loan Act. These loan products are, nonetheless, unconscionable both as a matter of New Mexico common law and under the terms of the New Mexico Unfair Practices Act.

14. For purposes of the general venue statute in New Mexico, Plaintiff resides in Santa Fe County. Venue in this judicial district is therefore proper pursuant to NMSA 1978, § 38-3-1(A).

### **DEFENDANTS' BUSINESS PRACTICES**

15. Defendants are engaged in the practice of originating and servicing high-cost installment loans throughout the State of New Mexico. As set forth in greater detail herein, these loans share a pair of common features that make them especially dangerous to New Mexico consumer welfare: (1) interest rates in excess of 500% per annum; and (2) prolonged amortization periods which result in cumulative payments that exceed the principal amount financed by as much as five times.

16. Upon information and belief, Defendants routinely originate these high-cost installment loans without making any inquiry into the borrowers' reasonable ability

to repay the loans under the proffered terms. The exorbitant interest rates offered in these loans are adhesive elements of a “take-it-or-leave-it” bargain.

17. The Office of the New Mexico Attorney General has received multiple complaints against the named Defendants. Upon information and belief, Defendants FASTBUCKS HOLDING CORPORATION, FAST BUCKS, INC., and FASTBUCKS WAGE AND BENEFITS, LLC, are affiliated with the other named individual Defendants as parent companies, and have subsidiary LLCs operating throughout the State of New Mexico, all of which are engaged in the unconscionable trade practices complained-of herein. Further, and upon information and belief, Defendants FASTBUCKS HOLDING CORPORATION, FAST BUCKS, INC., and FASTBUCKS WAGE AND BENEFITS, LLC, govern and control the business practices of the other named Defendants, including the unconscionable trade practices complained-of herein. To wit:

*Phyllis Etcitty of Crownpoint, New Mexico*

18. On December 16, 2006, New Mexico resident Phyllis Etcitty took out an \$800 loan from Defendant FASTBUCKS OF GALLUP, NEW MEXICO, LLC. A copy of the “Installment Loan Agreement, Security Agreement, and Disclosure Statement” (hereinafter “Etcitty Agreement”) is attached hereto as Exhibit A.

19. The Etcitty Agreement carries an interest rate of ***521.49 percent per annum***. The Agreement calls for the \$800 loan to be paid in eleven monthly installments of \$348.66 starting on January 17, 2007, with a final “balloon” payment of \$349.08 due on December 15, 2007. All told, the Etcitty Agreement calls for Ms. Etcitty to pay ***a total of \$4,184.34 over a one-year period on a loan of \$800.***

20. A copy of the "Payment History" for the Etcitty Agreement is attached hereto as Exhibit B. The Payment History reflects that Ms. Etcitty made a total of seven installment payments on her loan.

21. The first installment, paid on January 17, 2007, was in the amount of \$365.76, of which \$342.90 was allocated to the payment of interest, and \$22.86 to reduction of the principal balance of the loan. The second installment, paid on February 14, 2007, was in the amount of \$348.66, of which \$333.10 was allocated to the payment of interest, and \$15.56 to reduction of the principal balance of the loan. The third installment, paid on March 14, 2007, was in the amount of \$348.66, of which \$304.66 was allocated to the payment of interest, and \$44.00 to reduction of the principal balance of the loan. The fourth installment, paid on April 16, 2007, was in the amount of \$348.66, of which \$338.33 was allocated to the payment of interest, and \$10.33 to reduction of the principal balance of the loan. The fifth installment, paid on May 23, 2007, was in the amount of \$358.50, of which \$358.80 was allocated to the payment of interest, and \$0.00 to reduction of the principal balance of the loan. The sixth installment, paid on June 30, 2007, was in the amount of \$700, of which \$398.33 was allocated to the payment of interest, and \$301.67 to reduction of the principal balance of the loan. The seventh and final installment, paid on August 8, 2007, was in the amount of \$348.66, of which \$344.68 was allocated to the payment of interest, and \$3.98 to reduction of the principal balance of the loan.

22. Over a seven-month period, Ms. Etcitty paid Defendant Fast Bucks of Gallup, NM, LLC a total of \$2,818.90 in seven unequal installments. Of the \$2,818.90

that she paid to Defendant, a total of \$2,420.50 was allocated to the payment of interest, and only \$398.40 to reduction of the principal balance of her \$800 loan.

23. Moreover, and upon information and belief, the June 30, 2007 installment of \$700 was paid via an ACH debit from Ms. Etcitty's banking account that Ms. Etcitty did not authorize.

Endowa Endwarrior of Rio Rancho, New Mexico

24. On November 13, 2006, New Mexico resident Endowa Endwarrior took out a \$934 loan from Defendant FASTBUCKS OF RIO RANCHO, NEW MEXICO, LLC. A copy of the "Installment Loan Agreement and Disclosure Statement" (hereinafter "Endwarrior Agreement") is attached hereto as Exhibit C.

25. The Endwarrior Agreement carries an interest rate of ***521.49 percent per annum***. The Agreement calls for the \$934 loan to be repaid in twenty-three bi-weekly installments of \$194.92 starting on December 1, 2006, with a final "balloon" payment of \$197.32 due on October 19, 2007. All told, the Endwarrior Agreement calls for Ms. Endwarrior to pay ***a total of \$4,680.48 over nearly a one-year period on a loan of \$934.***

26. The Endwarrior Agreement is accompanied by a "Simple Interest Amortization Schedule" (hereinafter "payment schedule"), which is attached hereto as Exhibit D. The payment schedule reveals that for each of the first six installments of \$194.92 due under the Endwarrior Agreement, the full amount of each installment would be allocated to payment of interest on the loan. As such, the Agreement calls for Ms. Endwarrior to make a cumulative payment of \$1,169.52 on her \$964 loan before she reduces the principal balance of the loan by a single cent.

27. Of the \$1,169.52 due under the seventh through twelfth installments, a total of \$1,101 would be allocated to payment of interest on the loan, and only \$68.52 to the reduction of principal. As such, for the first \$2,339.04 that Ms. Endwarrior was obligated to pay under the terms of the payment schedule, a total of \$2,270.52 would be applied to payment of interest on the loan, while only \$68.52 would be applied to reduction of the principal balance.

Angel Bustamante of Roswell, New Mexico

28. On December 8, 2007, New Mexico resident Angel Bustamante took out a \$500 loan from Defendant FASTBUCKS OF ROSWELL, NEW MEXICO, LLC. A copy of the "Installment Loan Agreement, Security Agreement, and Disclosure Statement" (hereinafter the "Bustamante Agreement") is attached hereto as Exhibit E.

29. The Bustamante Agreement carries an interest rate of **650.01 percent per annum**. The Agreement calls for the \$500 loan to be paid in twenty-three bi-weekly installments of \$118.42 starting on December 8, 2007, with a final payment of \$117.20 due on November 4, 2008. All told, the Bustamante Agreement calls for Mr. Bustamante to pay **a total of \$2,840.86 over an eleven-month period on a loan of \$500**.

Johnny Romero of Las Vegas, New Mexico

30. On July 25, 2008, New Mexico resident Johnny Romero took out a \$500 loan from Defendant FASTBUCKS OF LAS VEGAS, NEW MEXICO, LLC. A copy of the "Installment Loan Agreement and Disclosure Statement" (hereinafter "Romero Agreement") is attached hereto as Exhibit F.

31. The Romero Agreement carries an interest rate of **649.99 percent per annum**. The Agreement calls for the \$500 loan to be paid in eleven bi-weekly



installments of \$134.22 starting on August 8, 2008, with a final “balloon” payment of \$134.29 due on January 9, 2009. All told, the Romero Agreement calls for Mr. Romero to pay *a total of \$1,610.71 over a five-month period on a loan of \$500.*

Lee Estenson of Alamogordo, New Mexico

32. On May 2, 2008, New Mexico resident Lee Estenson took out a \$1500 loan from FASTBUCKS OF ALAMOGORDO, NEW MEXICO, LLC. A copy of the “Installment Loan Agreement and Disclosure Statement” (hereinafter “Estenson Agreement” is attached hereto as Exhibit G.

33. The Estenson Agreement carries an interest rate of *519.97 percent per annum.* The Agreement calls for the \$1500 loan to be paid in ten monthly installments of \$662.59 starting on June 1, 2008, with a final “balloon” payment of \$663.00 due on April 1, 2009. All told, the Estenson Agreement calls for Mr. Estenson to pay *a total of 7,288.90 over an eleven-month period on a loan of \$1500.*

34. Upon information and belief, the Etcitty, Endwarrior, Bustamante, Romero, and Estenson Agreements (collectively, the “FastBucks Loans”) are emblematic of the thousands of high-cost installment loans Defendants have made to consumers throughout the State of New Mexico.

35. Defendants’ practice of originating the FastBucks Loans, all of which carry interest rates in excess of 500% per annum, constitutes an unconscionable trade practice under New Mexico law.

36. Further, and upon information and belief, Defendants’ failure to inquire into their borrowers’ reasonable ability to repay these loans under the proffered terms,

constitutes an independent and adequate basis for finding that they have engaged in unconscionable trade practices under New Mexico law.

37. By reason of the foregoing actions, Defendants have caused and, unless enjoined, will continue to cause injury, loss and damage to the State of New Mexico and consumers located in this State.

**COUNT I:  
COMMON-LAW UNCONSCIONABILITY**

38. The allegations set forth above are incorporated herein by reference.

39. A contract is substantively unconscionable and unenforceable when the content of the contractual terms is illegal, contrary to public policy, or grossly unfair. The FastBucks Loans are substantively unconscionable insofar as they require cumulative payments of as much as five (5) times the principal amount borrowed in order to satisfy the debt. Loans that carry APRs ranging from 500-650%, and which are amortized over extended periods of time, are grossly unfair, contrary to public policy and, as a result, substantively unconscionable on their face.

40. The FastBucks Loans are procedurally unconscionable because (1) the Loans were prepared entirely by Defendants for the acceptance by the borrowers on a “take-it-or-leave-it” basis and without an opportunity for meaningful bargaining; and (2) Defendants used their superior bargaining power vis-à-vis their borrowers to impose oppressive and unconscionable interest rates on their borrowers.

41. For all of the foregoing reasons, this Court should find the FastBucks Loans and all other loan agreements the Defendants have originated which offer the same or similar terms unconscionable as a matter of New Mexico common law.

**COUNT II:**

## **STATUTORY UNCONSCIONABILITY UNDER THE NEW MEXICO UNFAIR PRACTICES ACT**

42. The allegations set forth above are incorporated herein by reference.

43. The New Mexico Unfair Practices Act defines an “unconscionable trade practice” as “an act or practice in connection with...the extension of credit...which to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.” NMSA 1978, § 57-12-2(E)(1)-(2). The Act declares all such unconscionable trade practices to be unlawful. NMSA 1978, § 57-12-3.

44. Defendants’ practice of originating the FastBucks Loans, all of which carry interest rates in excess of 500% per annum, and, upon information and belief, Defendants’ ongoing practice of originating the same or similar loan agreements with consumers in this State, constitutes an unconscionable trade practice under the New Mexico Unfair Practices Act.

45. Moreover, and upon information and belief, Defendants’ practice of originating the FastBucks Loans without inquiring into the borrowers’ reasonable ability to repay under the terms proffered, constitutes an independent and adequate basis for this Court to find that Defendants have engaged in an unconscionable trade practice within the meaning of the Unfair Practices Act.

46. Further, and upon information and belief, Defendants’ practice of originating the FastBucks Loans was done in knowing and willful violation of the prohibition against unconscionable trade practices in the Unfair Practices Act, for which Defendants should rightfully be held liable for payment of civil penalties thereunder.

47. For all of the foregoing reasons, this Court should find the FastBucks Loans and all other loan agreements the Defendant has originated which offer the same or similar terms unconscionable under the New Mexico Unfair Practices Act.

48. Moreover, this Court should order all Defendants to pay restitution to the New Mexico consumers they have harmed as a result of their unconscionable trade practices pursuant to NMSA 1978, § 57-12-8(B).

**COUNT III:  
REQUEST FOR DECLARATORY RELIEF**

49. The allegations set forth above are incorporated herein by reference.

50. Plaintiff requests that this Court declare the FastBucks Loans and all other loan agreements sharing the same or similar terms unconscionable and unenforceable as a matter of New Mexico law.

**COUNT IV:  
APPLICATION FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF**

51. The allegations set forth above are incorporated herein by reference.

52. Defendants have engaged in a pattern and practice of exploiting New Mexico consumers through the origination of unconscionable high-cost installment loan agreements. New Mexico consumers have suffered, and will continue to suffer, irreparable harm as a direct and proximate result of Defendants' wrongful acts if an injunction does not issue in this lawsuit. Further, there is no adequate remedy at law, as Defendants' violations of the Unfair Practices Act are present and continuing. Any harm resulting from the issuance of an injunction will be outweighed by the benefit to the public, and there is a substantial likelihood that Plaintiff will prevail at a trial on the merits of its claims.

**COUNT V:  
EQUITABLE RECOVERY UNDER PRINCIPLES OF  
RESTITUTION AND UNJUST ENRICHMENT**

53. The allegations set forth above are incorporated herein by reference.

54. As a direct and proximate result of Defendants' origination of the FastBucks Loans and other loan agreements sharing the same or similar provisions, Defendants have been unjustly enriched inasmuch as they have received installment payments which, cumulatively, exceed more than 500% and as much as 650% of the principal amount financed.

55. This Court should find that Defendants have been unjustly enriched and order Defendants to disgorge all monies collected under the terms of the FastBucks Loans and any other agreements it originated with New Mexico consumers which share the same or similar terms.

**WHEREFORE**, Plaintiff respectfully prays that the Court:

A. Declare the terms of the FastBucks Loans structurally unfair and unconscionable as a matter of New Mexico common law and under Section 57-12-2(E) of the New Mexico Unfair Practices Act.

B. Declare all of Defendants' loan products that share the same or similar terms structurally unfair and unconscionable as a matter of New Mexico common law and under Section 57-12-2(E) of the New Mexico Unfair Practices Act.

C. Declare all loan agreements encompassed by Sections A. and B. above to be void and unenforceable.

D. Enter preliminary and permanent injunctive relief as follows:

1. Requiring Defendants to cease seeking future payments from consumers under the terms of the FastBucks Loans and from seeking future payments from any borrowers who have loan agreements with Defendants sharing the same or similar terms; and
  2. Requiring Defendants to cease originating any loans that share the same or similar terms as the FastBucks Loans.
- E. Order Defendants to pay restitution to all consumers determined during the litigation to have been injured by Defendants' unconscionable trade practices;
- F. Order Defendants to cease all collection efforts on any loans that it has originated in New Mexico;
- G. Order Defendants to pay a civil penalty of up to \$5,000 for each violation of the Unfair Practices Act determined to have been willful;
- H. Order Defendants to pay the taxable costs incurred by Plaintiff in prosecuting this action;
- I. Grant such other and further relief as it may deem just and proper.

Respectfully submitted,

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